

**SENATE, No. 2269**

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**STATE OF NEW JERSEY**

**212th LEGISLATURE**

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INTRODUCED OCTOBER 23, 2006

**Sponsored by:**

**Senator BARBARA BUONO**

**District 18 (Middlesex)**

**Senator ANDREW R. CIESLA**

**District 10 (Monmouth and Ocean)**

**Co-Sponsored by:**

**Senators Asselta, Bark, Bucco, Gormley, Kavanaugh, Lance, Littell, Sarlo,  
Sweeney and Turner**

**SYNOPSIS**

Excludes charges for fees and dues of certain public and nonprofit clubs and organizations from sales and use tax.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/12/2006)**

1 AN ACT excluding charges for fees and dues of certain public and  
2 nonprofit clubs and organizations from the sales and use tax, and  
3 amending P.L.1966, c.30.

4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7

8 1. Section 3 of P.L.1966, c.30 (C.54:32B-3) is amended to read  
9 as follows:

10 3. There is imposed and there shall be paid a tax of 7% upon:

11 (a) The receipts from every retail sale of tangible personal  
12 property or digital property, except as otherwise provided in this  
13 act.

14 (b) The receipts from every sale, except for resale, of the  
15 following services:

16 (1) Producing, fabricating, processing, printing or imprinting  
17 tangible personal property or digital property, performed for a  
18 person who directly or indirectly furnishes the tangible personal  
19 property or digital property, not purchased by him for resale, upon  
20 which such services are performed.

21 (2) Installing tangible personal property or digital property, or  
22 maintaining, servicing, repairing tangible personal property or  
23 digital property not held for sale in the regular course of business,  
24 whether or not the services are performed directly or by means of  
25 coin-operated equipment or by any other means, and whether or not  
26 any tangible personal property or digital property is transferred in  
27 conjunction therewith, except (i) such services rendered by an  
28 individual who is engaged directly by a private homeowner or  
29 lessee in or about his residence and who is not in a regular trade or  
30 business offering his services to the public, (ii) such services  
31 rendered with respect to personal property exempt from taxation  
32 hereunder pursuant to section 13 of P.L.1980, c.105 (C.54:32B-8.1),  
33 (iii) (Deleted by amendment, P.L.1990, c.40), (iv) any receipts from  
34 laundering, dry cleaning, tailoring, weaving, or pressing clothing,  
35 and shoe repairing and shoeshining and (v) services rendered in  
36 installing property which, when installed, will constitute an addition  
37 or capital improvement to real property, property or land, other than  
38 landscaping services and other than installing carpeting and other  
39 flooring.

40 (3) Storing all tangible personal property not held for sale in the  
41 regular course of business; the rental of safe deposit boxes or  
42 similar space; and the furnishing of space for storage of tangible  
43 personal property by a person engaged in the business of furnishing  
44 space for such storage.

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Space for storage" means secure areas, such as rooms, units,  
2 compartments or containers, whether accessible from outside or  
3 from within a building, that are designated for the use of a customer  
4 and wherein the customer has free access within reasonable  
5 business hours, or upon reasonable notice to the furnisher of space  
6 for storage, to store and retrieve property. Space for storage shall  
7 not include the lease or rental of an entire building, such as a  
8 warehouse or airplane hanger.

9 (4) Maintaining, servicing or repairing real property, other than a  
10 residential heating system unit serving not more than three families  
11 living independently of each other and doing their cooking on the  
12 premises, whether the services are performed in or outside of a  
13 building, as distinguished from adding to or improving such real  
14 property by a capital improvement, but excluding services rendered  
15 by an individual who is not in a regular trade or business offering  
16 his services to the public, and excluding garbage removal and sewer  
17 services performed on a regular contractual basis for a term not less  
18 than 30 days.

19 (5) Direct-mail processing services, except for direct-mail  
20 processing services in connection with distribution of direct mail to  
21 out-of-State recipients.

22 (6) (Deleted by amendment, P.L.1995, c.184).

23 (7) Utility service provided to persons in this State, any right or  
24 power over which is exercised in this State.

25 (8) Tanning services, including the application of a temporary  
26 tan provided by any means.

27 (9) Massage, bodywork or somatic services, except such services  
28 provided pursuant to a doctor's prescription.

29 (10) Tattooing, including all permanent body art and permanent  
30 cosmetic make-up applications.

31 (11) Investigation and security services.

32 (12) Information services.

33 (13) Transportation services originating in this State and  
34 provided by a limousine operator, as permitted by law, except such  
35 services provided in connection with funeral services.

36 Wages, salaries and other compensation paid by an employer to  
37 an employee for performing as an employee the services described  
38 in this subsection are not receipts subject to the taxes imposed  
39 under this subsection (b).

40 Services otherwise taxable under paragraph (1) or (2) of this  
41 subsection (b) are not subject to the taxes imposed under this  
42 subsection, where the tangible personal property or digital property  
43 upon which the services were performed is delivered to the  
44 purchaser outside this State for use outside this State.

45 (c) (1) Receipts from the sale of prepared food in or by  
46 restaurants, taverns, or other establishments in this State, or by  
47 caterers, including in the amount of such receipts any cover,  
48 minimum, entertainment or other charge made to patrons or

1 customers, except for meals especially prepared for and delivered to  
2 homebound elderly, age 60 or older, and to disabled persons, or  
3 meals prepared and served at a group-sitting at a location outside of  
4 the home to otherwise homebound elderly persons, age 60 or older,  
5 and otherwise homebound disabled persons, as all or part of any  
6 food service project funded in whole or in part by government or as  
7 part of a private, nonprofit food service project available to all such  
8 elderly or disabled persons residing within an area of service  
9 designated by the private nonprofit organization; and

10 (2) Receipts from sales of food and beverages sold through  
11 vending machines, at the wholesale price of such sale, which shall  
12 be defined as 70% of the retail vending machine selling price,  
13 except sales of milk, which shall not be taxed. Nothing herein  
14 contained shall affect other sales through coin-operated vending  
15 machines taxable pursuant to subsection (a) above or the exemption  
16 thereto provided by section 21 of P.L.1980, c.105 (C.54:32B-8.9).

17 The tax imposed by this subsection (c) shall not apply to food or  
18 drink which is sold to an airline for consumption while in flight.

19 (3) For the purposes of this subsection:

20 "Food and beverages sold through vending machines" means  
21 food and beverages dispensed from a machine or other mechanical  
22 device that accepts payment; and

23 "Prepared food" means:

24 (i) A. food sold in a heated state or heated by the seller; or

25 B. two or more food ingredients mixed or combined by the  
26 seller for sale as a single item, but not including food that is only  
27 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,  
28 poultry, and foods containing these raw animal foods requiring  
29 cooking by the consumer as recommended by the Food and Drug  
30 Administration in Chapter 3, part 401.11 of its Food Code so as to  
31 prevent food borne illnesses; or

32 C. food sold with eating utensils provided by the seller,  
33 including plates, knives, forks, spoons, glasses, cups, napkins, or  
34 straws. A plate does not include a container or packaging used to  
35 transport the food;  
36 provided however, that

37 (ii) "prepared food" does not include the following sold without  
38 eating utensils:

39 A. food sold by a seller whose proper primary NAICS  
40 classification is manufacturing in section 311, except subsector  
41 3118 (bakeries);

42 B. food sold in an unheated state by weight or volume as a  
43 single item; or

44 C. bakery items, including bread, rolls, buns, biscuits, bagels,  
45 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,  
46 muffins, bars, cookies, and tortillas.

1 (d) The rent for every occupancy of a room or rooms in a hotel  
2 in this State, except that the tax shall not be imposed upon a  
3 permanent resident.

4 (e) (1) Any admission charge to or for the use of any place of  
5 amusement in the State, including charges for admission to race  
6 tracks, baseball, football, basketball or exhibitions, dramatic or  
7 musical arts performances, motion picture theaters, except charges  
8 for admission to boxing, wrestling, kick boxing or combative sports  
9 exhibitions, events, performances or contests which charges are  
10 taxed under any other law of this State or under section 20 of  
11 P.L.1985, c.83 (C.5:2A-20), and, except charges to a patron for  
12 admission to, or use of, facilities for sporting activities in which  
13 such patron is to be a participant, such as bowling alleys and  
14 swimming pools. For any person having the permanent use or  
15 possession of a box or seat or lease or a license, other than a season  
16 ticket, for the use of a box or seat at a place of amusement, the tax  
17 shall be upon the amount for which a similar box or seat is sold for  
18 each performance or exhibition at which the box or seat is used or  
19 reserved by the holder, licensee or lessee, and shall be paid by the  
20 holder, licensee or lessee.

21 (2) The amount paid as charge of a roof garden, cabaret or other  
22 similar place in this State, to the extent that a tax upon such charges  
23 has not been paid pursuant to subsection (c) hereof.

24 (f) (1) The receipts from every sale, except for resale, of  
25 intrastate or interstate telecommunications sourced to this State in  
26 accordance with section 29 of P.L.2005, c.126 (C.54:32B-3.4).

27 (2) The receipts from every sale, except for resale, of intrastate  
28 or interstate mobile telecommunications services billed by or for a  
29 customer's home service provider and provided to a customer with a  
30 place of primary use in this State. The provisions and definitions of  
31 the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C.  
32 ss. 116-126 (Pub.L. 106-252), are applicable herein.

33 (g) The receipts from every sale, except for resale, of prepaid  
34 calling service and the recharge of prepaid calling service.

35 (h) Charges in the nature of initiation fees, membership fees or  
36 dues for access to or use of the property or facilities of a health and  
37 fitness, athletic, sporting or shopping club or organization in this  
38 State, except for: (1) membership in a club or organization whose  
39 members are predominantly age 18 or under; and (2) charges in the  
40 nature of initiation fees, membership fees, or dues for access to or  
41 use of the property or facilities of a health and fitness, athletic,  
42 sporting, or shopping club or organization that is exempt from  
43 taxation pursuant to paragraph (1) of subsection (a) of section 9 of  
44 P.L.1966, c.30 (C.54:32B-9), or that is exempt from taxation  
45 pursuant to paragraph (1) or (2) of subsection (b) of section 9 of  
46 P.L.1966, c.30 and that has complied with subsection (d) of section  
47 9 of P.L.1966, c.30.

1 (i) The receipts from parking, storing or garaging a motor  
2 vehicle, excluding charges for the following types of parking:  
3 residential parking; employee parking, when provided by an  
4 employer or at a facility owned or operated by the employer;  
5 municipal metered parking; and such receipts subject to tax  
6 pursuant to any other law or ordinance.  
7 (cf: P.L.2006, c.44, s.2)

8  
9 2. This act shall take effect immediately and apply to  
10 membership periods beginning on or after the first day of the fourth  
11 month next following the date of enactment.

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13  
14 STATEMENT  
15

16 This bill excludes the charges for fees and dues of certain public  
17 and nonprofit clubs and organizations from the sales and use tax. In  
18 particular, this bill exempts the fees and dues that are charged for  
19 access to health and fitness, athletic, sporting, and shopping clubs  
20 and facilities of nonprofit organizations and local units of  
21 government, which were made taxable under the provisions of the  
22 new law P.L.2006, c.44.

23 As of October 1, 2006, the State of New Jersey imposes a sales  
24 and use tax on the charges for initiation fees, membership fees, or  
25 dues for access to or use of the property or facilities of a health and  
26 fitness, athletic, sporting, or shopping club or organization. While  
27 the new law, P.L.2006, c.44, established a specific exclusion for  
28 clubs and organizations whose members are predominately age 18  
29 or under, it did not extend the exclusion to exempt public and  
30 nonprofit clubs or organizations. Organizations such as municipal  
31 athletic clubs, community swimming pools, and nonprofit fitness  
32 facilities that are maintained for the benefit of residents and  
33 communities are subject to the seven percent sales tax.

34 This bill permits public and nonprofit clubs and organizations to  
35 continue to serve communities and residents of the State without the  
36 additional burden of a seven percent tax on charges for initiation  
37 fees, membership fees, or dues. The sales tax imposed by the new  
38 law has increased the overall cost and made membership fees and  
39 dues significantly more expensive. The imposition of the sales tax  
40 has further impeded the ability of public and nonprofit clubs and  
41 organizations to deliver services, and restricted access for  
42 individuals throughout the State who are most in need.